

Jun 21, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JESS RILEY OSBORNE,

4:19-cv-05054-SMJ

Plaintiff,

v.

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
AND MOTION FOR
PRELIMINARY INJUNCTION**

DR. JOHN SMITH, PA-C JAMES
DUNCAN, RN-2 POLLY JOSIFEK,
ARNP JILL HARPER, RN-2
DEBORAH POMRANING, and RN
CHRIS FICKEL,

Defendants.

Plaintiff Jess Riley Osborne is a prisoner at the Washington State Penitentiary. Defendants have not been served. By separate order, the Court advised him of the deficiencies of his complaint and directed to him to amend or voluntarily dismiss it within sixty days. Before the Court, without oral argument, are Plaintiff's *pro se* Motion for Appointment of Counsel, ECF No. 7, and Motion for Preliminary Injunction, ECF No. 9. Having reviewed the file in this matter, the Court is fully informed and denies both motions.

APPOINTMENT OF COUNSEL

Generally, a person has no right to counsel in civil actions. However, the

1 court has discretion to designate counsel pursuant to 28 U.S.C. § 1915(e)(1) in
2 “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).
3 “When determining whether ‘exceptional circumstances’ exist, a court must
4 consider ‘the likelihood of success on the merits as well as the ability of the
5 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
6 involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

7 At this time, the record does not reflect exceptional circumstances. Plaintiff’s
8 situation is not unlike that of other incarcerated individuals, and he has been
9 directed to amend or voluntarily dismiss his deficient complaint. Thus, the motion
10 is denied.

11 MOTION FOR PRELIMINARY INJUNCTION

12 “A preliminary injunction is an extraordinary remedy never awarded as of
13 right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “A plaintiff
14 seeking a preliminary injunction must establish that he is likely to succeed on the
15 merits, that he is likely to suffer irreparable harm in the absence of preliminary
16 relief, that the balance of equities tips in his favor, and that an injunction is in the
17 public interest.” *Id.* at 20; *Am. Trucking Ass’n v. City of Los Angeles*, 559 F.3d 1046,
18 1052 (9th Cir. 2009).

19 The motion, however, is premature because the Court has not yet determined
20 that Plaintiff has filed a legally sufficient complaint, nor have Defendants been

1 served. At this time, he is unable to show that he is likely to succeed on the merits.

2 Thus, the motion is denied with leave to renew.

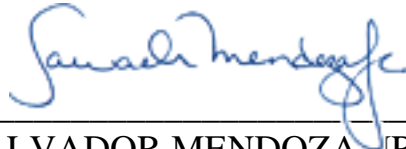
3 Accordingly, **IT IS HEREBY ORDERED:**

4 **1.** Plaintiff's Motion for Appointment of Counsel, **ECF No. 7**, is
5 **DENIED.**

6 **2.** Plaintiff's Motion for Preliminary Injunction, **ECF No. 9**, is **DENIED**
7 **with leave to renew.**

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
9 provide a copy to Plaintiff.

10 **DATED** this 21st day of June 2019.

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12 SALVADOR MENDOZA, JR.
13 United States District Judge
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